

CREDITABLE COVERAGE GUIDANCE FOR MEDIGAP ISSUERS

INTRODUCTION

The guidance found on the Centers for Medicare & Medicaid Services webpage at www.cms.hhs.gov/CreditableCoverage/Downloads/CCGuidance.pdf (General Creditable Coverage Guidance) provides general guidance on how certain entities should comply with section 1860D-1 of the Social Security Act, as added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and with implementing regulations at 42 CFR §423.56. That guidance applies to Medigap issuers, with the following exceptions:

POLICY GUIDANCE

Content of Creditable Coverage Disclosures from Entity to Beneficiaries

The general information under this subheading in the General Creditable Coverage Guidance applies to Medigap issuers because they are subject to the general beneficiary notice requirements described in 42 CFR §423.56. However, until May 15, 2006, Medigap issuers may satisfy their beneficiary notice requirements in that section of the regulations by continuing to use the Medigap-specific notices that were required prior to November 15, 2005. We strongly encourage Medigap issuers to do so. The following paragraphs describe the requirements of those Medigap-specific notices, and explain why CMS recommends that Medigap issuers continue to use them until May 15, 2006.

Section 104(a) of MMA required Medigap issuers, prior to November 15, 2005, to send a special notice to individuals whose policies included prescription drug coverage.¹ That notice, developed in consultation with the National Association of Insurance Commissioners, was required to disclose not only whether the prescription drug coverage was creditable, but other Medigap-specific information as well. The notice that Medigap issuers were required to use to satisfy the obligation under section 104(a) of MMA is posted on the CMS Website at www.cms.hhs.gov/CreditableCoverage/. Medigap issuers were required to use the precise language that appears in the posted notices, with the following exceptions:

1. The issuer was required to use different language to describe certain consumer protections that are guaranteed by State, but not Federal law. Such substituted or additional language had to comply with State law.
2. The issuer could mention that it offers PDP or MA-PD products, as long as it used language that complies with Federal law.

¹ The notice described in 42 CFR §423.56, and the notice in section 104(a) of MMA, apply to ALL Medigap Rx policies in ALL states, including policies that are no longer being marketed (i.e., all standardized plans H, I, and J; any other standardized policies that contain Rx benefits as innovative benefits or riders; any prestandardized Medigap Rx policies issued prior to mid-1992; and policies issued at any time in one of the waived states of Massachusetts, Minnesota, and Wisconsin that contain Rx coverage.

3. The notice had to inform policyholders who intend to join a PDP or an MA-PD what the policyholder's adjusted Medigap premium would be (if the premium had been calculated by the time the notice was sent), and how to notify the Medigap issuer that they have joined a PDP or MA-PD.

4. Issuers that were not offering any of the Plans A, B, C, F, K or L (or any similar plans, in waiver states) to new enrollees were required to use the "Medigap Closed Block Modification" language, posted at www.cms.hhs.gov/CreditableCoverage/. On the other hand, an issuer that offered any of the plans A, B, C, F, K, or L to new enrollees, and assumed a closed block of business from another issuer, would be required to offer those plans to individuals in those closed blocks of business who wish to switch to one of these plans.

Timely use of these Medigap notices by Medigap issuers as required in section 104(a) satisfied the beneficiary disclosure requirements under 42 CFR §423.56, to provide disclosure prior to November 15, 2005 and will continue to satisfy any of the beneficiary notice requirements in that section of the regulations that apply through May 15, 2006. For example, if any individual requests a copy of the disclosure notice anytime during the period November 15, 2005, through May 15, 2006, or if the creditable status of a Medigap policy changes during that time period, **a Medigap issuer may satisfy its beneficiary notice requirements by sending the notice that was required under section 104(a). We encourage Medigap issuers to continue using the section 104(a) notice through May 15, 2006, in order to provide beneficiaries with the most complete information.**

As stated in the section of the general guidance relating to disclosure to beneficiaries, subsequent sample/model language for the notices required by 42 CFR §423.56 will be provided in further guidance, for use by Medigap issuers and other sources of coverage after May 15, 2006.

Timing of Creditable Coverage Disclosure from Entity to Beneficiaries

The General Creditable Coverage Guidance list five "events" that occur on or after November 15, 2005, that trigger a requirement that entities again provide creditable coverage disclosure notices to beneficiaries. Unlike some entities such as group health plans, Medigap issuers do not cover individuals until after they are enrolled in Medicare. Moreover, as of January 1, 2006, Medigap issuers cannot offer for sale any policies with prescription drug coverage. Therefore, two of the five requirements listed in the General Creditable Coverage Guidance do not apply to Medigap issuers (i.e., sending a notice prior to an individual's Initial Enrollment Period for Part D, and prior to the Medicare-eligible individual's effective date of coverage in a plan or entity described in 42 CFR §423.56.).² Only the following three events trigger Medigap issuers' obligations to

² As stated previously, to the extent a Medigap issuer sells policies that include prescription drug coverage and have an effective date any time from November 15 through December 31, 2005, such issuers can

provide creditable coverage disclosure notices to individuals who have a policy with prescription drug coverage:

1. Prior to the Medicare Part D Annual Coordinated Election Period (ACEP) – which is November 15th through December 31st of each year;
 2. Upon a beneficiary's request; and
 3. Whenever creditable prescription drug coverage ends, or whenever prescription drug coverage changes so that it is no longer creditable or becomes creditable.
- Note that these scenarios will rarely apply to Medigap insurers. Most Medigap policies are guaranteed renewable and therefore their benefits cannot be changed. However, the creditable status of prescription drug coverage depends on how it compares to the standard Medicare drug benefit. Therefore, the creditable status of a Medigap policy conceivably could change due to changes in utilization under the policy or under the Medicare benefit, or indexing of the standard Medicare drug benefit.

CONTACT FOR FURTHER INFORMATION

For further information on creditable coverage, you may refer to the sources of information listed under this subheading in the General Creditable Coverage Guidance.

LINK TO CREDITABLE AND NON-CREDITABLE COVERAGE DISCLOSURE NOTICES

As stated previously, CMS has posted, on our Website, the notice of creditable coverage, and the notice of noncreditable coverage, that Medigap issuers were required to send to Medicare beneficiaries under Section 104(a) of MMA. Timely use of those Medigap-specific notices will constitute compliance with the provisions of 42 CFR §423.56 that require beneficiary notices to be sent during the period of November 15, 2005, through May 15, 2006

NOTE

In instances where an employer or union is involved in facilitating coverage for employees or retirees that consists of a product generally sold in the Medigap market, either this Guidance paper, or the General Creditable Coverage Guidance posted at www.cms.hhs.gov/CreditableCoverage will apply. To determine which of these two documents apply, see the document titled “When a Beneficiary Has Drug Coverage Purchased in the Medigap Market, and an Employer or Union is Involved, Which Notice of Creditable Coverage Should Be Sent,” which is included in the list of documents posted at www.cms.hhs.gov/CreditableCoverage/.

provide the appropriate Medigap-specific notice under Section 104(a). Also, to the extent any individual requests a copy of the disclosure notice anytime during the period November 15, 2005, through May 15, 2006, or if the creditable status of a Medigap policy changes during that time period, a Medigap issuer can satisfy its obligation under that section of the regulations to provide a notice, by providing a copy of the notice required under section 104(a).